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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/722,356	11/28/2000	Hans-Jurgen Haardt	01435.0104	6193

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EXAMINER

CHEUNG, WILLIAM K

ART UNIT PAPER NUMBER

1713

DATE MAILED: 08/27/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/722,356

Applicant(s)

HAARDT ET AL.

Examiner

William K Cheung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☒ Claim(s) 3-7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

### **DETAILED ACTION**

1. Applicant's affirmed election of Group I invention in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Therefore, in view of lack of traversal to restriction requirement set forth from Paper No. 6, the restriction set forth is deemed proper and is therefore made Final.

Applicants reserve the right to file a divisional application based on the subject matter of non-elected claim 8. Claims 1-7 are examined with merit.

### ***Claim Objections***

2. Claims 4-5 are objected to under 37 CFR 1.75(c) because Claims 4-5 are setting up a multiple dependency of claims 3. However, claim 3 is also a multiple dependent claim. See MPEP § 608.01(n).

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3. Claim 6 is objected to under 37 CFR 1.75(c) because Claim 6 is setting up a multiple dependency of claims 1-5. However, claims 3-5 are also a multiple dependent claim. See MPEP § 608.01(n).

4. Claim 7 is objected to under 37 CFR 1.75(c) because Claim 7 is setting up a multiple dependency of claims 1-6. However, claims 3-6 are also a multiple dependent claim. See MPEP § 608.01(n).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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6. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saito et al. (JP405086109A).

*The invention of claims 1-2 relates to a **process for early detection of reactor fouling occurring during a gas phase polymerization of olefin(s) using a fluidized bed reactor comprising a fluidization grid, characterized in that the upper part of the fluidization grid is fitted with devices capable of detecting the polymer agglomerates hitting said devices.***

Saito et al. (English Abstract) disclose a pair of electrode plates (detector) which are arranged on the inner wall surrounding a fluidized bed reactor to quantitatively determine the fouling of the inner wall surrounding a fluidized bed for a polymerization process. By analyzing the electrostatic capacity changes, the extent of the fouling of the inner wall is determined. Because the detection process must involve the deposition of the polymer particles onto the electrodes, the examiner has a reasonable basis to believe that the claimed "devices capable of detecting the polymer agglomerates hitting said devices" is inherently possessed by Saito et al.

Regarding the claimed "for early detection" of claim 1, applicants must recognize that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of

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performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

The difference between the invention of claims 1-2 and the disclosure to Saito et al. is that Saito et al. are silent on a process which involves a fluidization grid, wherein the upper part of the fluidization grid is fitted with the said devices.

Saito et al. (English Abstract) disclose a pair of electrode plates (detector) which are arranged on the inner wall surrounding a fluidized bed reactor to quantitatively determine the fouling of the inner wall surrounding a fluidized bed for a polymerization process. Therefore, since a fluidization grid can be considered a part of the inner wall surfaces, the disclosure to Saito et al. generically includes the process as claimed. Motivated by the expectation of optimizing the agglomerate detection process, it would have been obvious to one of ordinary skill in art to use the process teachings of Saito et al. and apply "routine engineering practice" to optimize the placement location of the electrodes (detector) to obtain the invention of claims 1-2.

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***Allowable Subject Matter***

7. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Saito et al. are silent on a process which comprises using a device that can be automatically reset. Therefore, it would not be apparent to one of ordinary skill in art to use the process teachings of Saito to obtain the process invention of claim 3.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William K Cheung whose telephone number is (703) 305-0392. The examiner can normally be reached on Monday-Friday 9:00AM to 2:00PM; 4:00PM to 8:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David WU can be reached on (703) 308-2450. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

A handwritten signature in black ink, appearing to read 'William K. Cheung', with a stylized, flowing script.

William K. Cheung

Patent Examiner

August 21, 2003